

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHARLES A. EDWARDS,
Plaintiff,
vs.
D. SMITH,
Defendants.

1:20-cv-01822-GSA-PC

**ORDER FOR CLERK TO RANDOMLY
ASSIGN A UNITED STATES DISTRICT
JUDGE TO THIS CASE**

AND

**FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS CASE
PROCEED ONLY AGAINST
DEFENDANT DON SMITH WITH
PLAINTIFF'S EXCESSIVE FORCE
CLAIM, AND THAT ALL OTHER
CLAIMS BE DISMISSED FOR FAILURE
TO STATE A CLAIM**

**OBJECTIONS DUE ON OR BEFORE
APRIL 25, 2023**

I. BACKGROUND

Charles A. Edwards (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action filed pursuant to 42 U.S.C. § 1983. On December 28, 2020, Plaintiff filed the Complaint commencing this action. (ECF No. 1.) On March 25, 2022, the Court dismissed the Complaint for failure to state a claim, with leave to amend. (ECF No. 9.) On April 11, 2022, Plaintiff filed the First Amended Complaint. (ECF No. 10.) On April 13, 2022, Plaintiff lodged a First Amended Complaint (ECF No. 11), which was stricken by the Court on June 8, 2022, for attempting to add information piecemeal to the complaint in violation of Local Rule 220, with leave to file a Second Amended Complaint complete in itself. (ECF No.

1 13.) On June 17, 2022, Plaintiff filed the Second Amended Complaint, (ECF No. 14), which was
2 stricken by the Court for lack of Plaintiff's signature, (ECF No. 15). On July 1, 2022, Plaintiff
3 filed the Second Amended Complaint, bearing his signature, which is now before the Court for
4 screening. 28 U.S.C. § 1915. (ECF No. 16.)

5 **II. SCREENING REQUIREMENT**

6 The court is required to screen complaints brought by prisoners seeking relief against a
7 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
8 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
9 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
10 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).
11 "Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall
12 dismiss the case at any time if the court determines that the action or appeal fails to state a claim
13 upon which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

14 A complaint is required to contain "a short and plain statement of the claim showing that
15 the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
16 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere
17 conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
18 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff's allegations are taken
19 as true, courts "are not required to indulge unwarranted inferences." Doe I v. Wal-Mart Stores,
20 Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). To state
21 a viable claim, Plaintiff must set forth "sufficient factual matter, accepted as true, to 'state a claim
22 to relief that is plausible on its face.'" Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service,
23 572 F.3d 962, 969 (9th Cir. 2009). While factual allegations are accepted as true, legal
24 conclusions are not. Id. The mere possibility of misconduct falls short of meeting this
25 plausibility standard. Id.

26 **III. ALLEGATIONS IN SECOND AMENDED COMPLAINT**

27 Plaintiff is currently incarcerated at California State Prison-Sacramento in Represa,
28 California. The events at issue in the Second Amended Complaint allegedly occurred at Kern

1 Valley State Prison in Delano, California, when Plaintiff was incarcerated there in the custody of
2 the California Department of Corrections and Rehabilitation. Plaintiff names as the sole
3 defendant Correctional Officer Don Smith.

4 Plaintiff's allegations follow:

5 Plaintiff alleges in the Second Amended Complaint that he came out for an injection at
6 8:00 p.m., (date of incident not stated), and as he walked into the day room he was pepper-sprayed
7 and slammed to the ground. In Plaintiff's original complaint he states that this incident occurred
8 on May 31, 2020, and also states in the same complaint that it occurred on May 30, 2020 (ECF
9 No. 1 at 3 & 8.) He was then handcuffed and placed in a rotunda cage. Plaintiff was not
10 decontaminated by staff. He was told not to make a statement then escorted to his cell for 45
11 minutes. He was told at 9:00 p.m. that he needed to go up front. Plaintiff alleges that he stated
12 all of the facts, and everything is in the report.

13 As relief, Plaintiff requests settlement of this case.

14 **IV. PLAINTIFF'S CLAIMS**

15 **A. Section 42 U.S.C. § 1983**

16 The Civil Rights Act under which this action was filed provides:

17 Every person who, under color of any statute, ordinance, regulation, custom, or
18 usage, of any State or Territory or the District of Columbia, subjects, or causes to
19 be subjected, any citizen of the United States or other person within the
jurisdiction thereof to the deprivation of any rights, privileges, or immunities
secured by the Constitution and laws, shall be liable to the party injured in an
action at law, suit in equity, or other proper proceeding for redress

21 42 U.S.C. § 1983.

22 “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely provides ‘a
23 method for vindicating federal rights elsewhere conferred.’” Graham v. Connor, 490 U.S. 386,
24 393-94 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)); see also Chapman v.
25 Houston Welfare Rights Org., 441 U.S. 600, 618 (1979); Hall v. City of Los Angeles, 697 F.3d
26 1059, 1068 (9th Cir. 2012); Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir. 2012); Anderson v.
27 Warner, 451 F.3d 1063, 1067 (9th Cir. 2006). “To the extent that the violation of a state law

28 ///

1 amounts to the deprivation of a state-created interest that reaches beyond that guaranteed by the
 2 federal Constitution, Section 1983 offers no redress.” *Id.*

3 To state a claim under § 1983, a plaintiff must allege that (1) the defendant acted under
 4 color of state law and (2) the defendant deprived him or her of rights secured by the Constitution
 5 or other federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006); see
 6 also Marsh v. Cnty. of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing “under color
 7 of state law”). A person deprives another of a constitutional right, “within the meaning of § 1983,
 8 ‘if he does an affirmative act, participates in another’s affirmative act, or omits to perform an act
 9 which he is legally required to do that causes the deprivation of which complaint is made.’”
 10 Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting
 11 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “The requisite causal connection may be
 12 established when an official sets in motion a ‘series of acts by others which the actor knows or
 13 reasonably should know would cause others to inflict’ constitutional harms.” *Id.* (quoting
 14 Johnson, 588 F.2d at 743). This standard of causation “closely resembles the standard
 15 ‘foreseeability’ formulation of proximate cause.” Arnold v. Int’l Bus. Mach. Corp., 637 F.2d
 16 1350, 1355 (9th Cir. 1981); see also Harper v. City of Los Angeles, 533 F.3d 1010, 1026 (9th
 17 Cir. 2008).

18 B. Excessive Force – Eighth Amendment Claim

19 “After conviction, the Eighth Amendment serves as the primary source of substantive
 20 protection. . . in cases. . . . where the deliberate use of force is challenged as excessive and
 21 unjustified.” Graham, 490 U.S. at 395 n.10 (citing Whitley v. Albers, 475 U.S. 312, 327 (1986));
 22 Hawkins v. Comparet-Cassani, 251 F.3d 1230, 1238 (9th Cir. 2001); Dennis v. Thurman, 959
 23 F.Supp. 1253, 1257 n.1 (C.D. Cal. 1997).

24 What is necessary to show sufficient harm for purposes of the Cruel and Unusual
 25 Punishments Clause [of the Eighth Amendment] depends upon the claim at issue” Hudson
 26 v. McMillian, 503 U.S. 1, 8 (1992). “The objective component of an Eighth Amendment claim
 27 is . . . contextual and responsive to contemporary standards of decency.” *Id.* (internal quotation
 28 marks and citations omitted). The malicious and sadistic use of force to cause harm always

1 violates contemporary standards of decency, regardless of whether or not significant injury is
 2 evident. Id. at 9; see also Oliver v. Keller, 289 F.3d 623, 628 (9th Cir. 2002) (Eighth Amendment
 3 excessive force standard examines *de minimis* uses of force, not *de minimis* injuries)). However,
 4 not “every malevolent touch by a prison guard gives rise to a federal cause of action.” Id. at 9.
 5 “The Eighth Amendment’s prohibition of cruel and unusual punishments necessarily excludes
 6 from constitutional recognition *de minimis* uses of physical force, provided that the use of force
 7 is not of a sort ‘repugnant to the conscience of mankind.’” Id. at 9-10 (internal quotations marks
 8 and citations omitted).

9 “[W]henever prison officials stand accused of using excessive physical force in violation
 10 of the Cruel and Unusual Punishments Clause, the core judicial inquiry is . . . whether force was
 11 applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to
 12 cause harm.” Id. at 7. “In determining whether the use of force was wanton and unnecessary, it
 13 may also be proper to evaluate the need for application of force, the relationship between that
 14 need and the amount of force used, the threat reasonably perceived by the responsible officials,
 15 and any efforts made to temper the severity of a forceful response.” Id. (internal quotation marks
 16 and citations omitted). “The absence of serious injury is . . . relevant to the Eighth Amendment
 17 inquiry, but does not end it.” Id.

18 Although the Second Amended Complaint is very brief on the facts, the Court does find
 19 that Plaintiff’s allegations against Defendant C/O Don Smith for use of excessive force in the
 20 Second Amended Complaint are sufficient to state a claim.

21 **C. Failure to Decontaminate – Eighth Amendment Claim**

22 The failure to decontaminate or otherwise assist a prisoner suffering from the painful
 23 effects of pepper spray may support a claim under the Eighth Amendment.

24 An Eighth Amendment deliberate indifference claim based on a medical need has two
 25 elements: “the seriousness of the prisoner’s medical need and the nature of the defendant’s
 26 response to that need.” McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on
 27 other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997); see also Estelle v.
 28 Gamble, 429 U.S. 97, 106 (1976). A medical need is sufficiently serious “if the failure to treat

1 the prisoner's condition could result in further significant injury or the 'unnecessary and wanton
2 infliction of pain.'" McGuckin, 974 F.2d at 1059 (quoting Estelle, 429 U.S. at 104). "Deliberate
3 indifference is a high legal standard." Id. at 1019; Toguchi v. Chung, 391 F.3d 1051, 1060 (9th
4 Cir. 2004). The prison official must be aware of facts from which he could make an inference
5 that "a substantial risk of serious harm exists" and must make the inference. Farmer v. Brennan,
6 511 U.S. 825, 837 (1994).

7 Deliberate indifference may be shown when prison officials deny, delay, or intentionally
8 interfere with medical treatment, or may be shown by the way in which prison officials provide
9 medical care. Hutchinson v. United States, 838 F.2d 390, 393-94 (9th Cir. 1988). In order to be
10 actionable, the indifference to a prisoner's medical needs must be substantial; mere indifference,
11 negligence, or medical malpractice will not support this cause of action. See Estelle, 429 U.S. at
12 105-06); Whitley, 475 U.S. at 319; Toguchi, 391 F.3d at 1057; McGuckin, 974 F.2d at 1059.

13 Plaintiff's allegations in his claim for failure to decontaminate are insufficient to state a
14 cognizable claim against defendant Smith. Plaintiff has not named an individual defendant who
15 personally acted to deny him the opportunity to decontaminate, or prevented him from
16 decontaminating. Instead, Plaintiff merely alleges that he "did not get decontaminated by
17 'staff.'" (ECF No. 16 at 4.) To state a § 1983 claim, Plaintiff must **name** an **individual** defendant
18 and allege facts showing personal conduct by the named defendant who is claimed to have
19 violated Plaintiff's constitutional or other federal rights. Plaintiff has not done so.

20 Therefore, Plaintiff fails to state a claim for failure to decontaminate.

21 **V. CONCLUSION AND RECOMMENDATIONS**

22 For the reasons set forth above, the court finds that Plaintiff's Second Amended
23 Complaint states a cognizable claim against Defendant Don Smith for use of excessive force in
24 violation of the Eighth Amendment, but no other cognizable claims.

25 In this action, the Court previously granted Plaintiff an opportunity to amend the
26 complaint, with guidance by the Court. Plaintiff has now filed three complaint and has only
27 alleged a claim against Defendant Don Smith for use of excessive force. The Court finds that
28 the deficiencies outlined above are not capable of being cured by amendment, and therefore

1 further leave to amend should not be granted. 28 U.S.C. § 1915(e)(2)(B)(ii); Lopez v. Smith,
2 203 F.3d 1122, 1127 (9th Cir. 2000).

3 Accordingly, **IT IS HEREBY ORDERED** that the Clerk of Court randomly assign a
4 United States District Judge to this case;

5 **AND**

6 Based on the foregoing, **IT IS HEREBY RECOMMENDED** that:

- 7 1. Pursuant to 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e), this case proceed only
8 against Defendant C/O Don Smith for use of excessive force in violation of the
9 Eighth Amendment;
- 10 2. All other claims be dismissed for failure to state a claim upon which relief may
11 be granted under § 1983, without leave to amend; and
- 12 3. This case be referred back to the Magistrate Judge for further proceedings,
13 including initiation of service of process.

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). **On or before**
16 **April 25, 2023**, Plaintiff may file written objections to the findings and recommendations with
17 the court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and
18 Recommendations.” Plaintiff is advised that failure to file objections within the specified time
19 may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th
20 Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

21 IT IS SO ORDERED.
22

23 Dated: April 3, 2023

24 /s/ Gary S. Austin
25 UNITED STATES MAGISTRATE JUDGE
26
27
28